



EX PARTE - FILED ELECTRONICALLY

March 13, 2007

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Implementation of the Telecommunications Act of 1996:
Telecommunication Carrier's Use of Customer Proprietary
Network Information and Other Customer Information, CC
Docket No. 96-115; Petition for Rulemaking to Enhance
Security and Authentication Standards for Access to
Customer Proprietary Network Information, RM-11277**

Dear Ms. Dortch:

On March 13, 2007, Jim Kohlenberger, The VON Coalition Executive Director, Paula Boyd, Microsoft, and Staci Pies, PointOne met with Scott Bergmann, Legal Advisor to Commissioner Jonathan Adelstein to discuss issues related to VoIP provider implementation of the Commission's proposed CPNI rules.

As stated in previous ex partes, the Voice on the Net ("VON") Coalition supports the Commission's goal of preventing pretexting and protecting confidential customer data against unauthorized release. However, we are concerned by proposals to stretch the clear statutory language of Section 222 of the Communications Act of 1934 to apply potentially conflicting obligations on interconnected Voice over Internet Protocol ("VoIP") providers. Imposition of such requirements, especially without an adequate transition period, could thwart the tremendous consumer benefits VoIP brings to Internet and broadband communications.

- The Commission Does Not Have Authority Under Title I of the Act to Impose Title II Obligations on Non-Carriers.
 - The Microsoft, Skype, and Yahoo filing of April 28, 2006 in this docket explains why the Commission lacks subject matter jurisdiction under Title I to regulate a VoIP provider's post-transmission practices regarding sensitive customer information.
 - Certain of the potential new obligations that have been suggested - e.g., deleting or encrypting stored sensitive customer data, maintaining "audit trails" regarding the disclosure of such data, and post-transmission breach notice requirements - would appear to seek to regulate practices that occur entirely after a VoIP call has terminated.
 - If the Commission determines that it has the statutory authority to extend the clear language of Section 222 to interconnected VoIP providers, it should make clear that CPNI rules do not extend to non-interconnected VoIP services when offered as standalone services or where a noninterconnected VOIP service is offered in conjunction with an interconnected VOIP service.
 - Specifically, the FCC should only apply its CPNI rules to "interconnected VoIP services" that enable users to **make and receive** phone calls to and from the PSTN and are sold and marketed as substitutes for traditional phone services. Where there is a bundled offering, only the interconnected-VoIP service portion of the offering should be subject to the Commission's CPNI rules.
- **Extending the FCC's CPNI Rules to VoIP Providers at This Time Is Unnecessary, and Would Likely Be Counterproductive, Costly, and Frustrating for Consumers.**
 - There is no evidence of a problem with CPNI violations in the Internet world
 - There are significant questions regarding the Commissions legal authority to impose Section 222 obligations on Interconnected VoIP providers

- The Commission should develop a full and complete record by initiating a Further Notice of Proposed Rulemaking.
- **The Commission Must Consider the Impact of Its Rules on Small Businesses and Provide Sufficient Time For All Providers to Implement Section 222 Rules**
 - Interconnected VoIP providers, most of whom are small businesses serving small businesses, must have sufficient time to transition their systems to meet all Section 222 requirements.
 - USTelecom estimates compliance costs for small providers this way: "One report noted that the cost of adding a field to mechanized customer service records in order to track CPNI approval status would range from \$12 per line on average up to \$64 per line for the smallest rural telephone companies.
 - There is no reason to suspect that compliance costs with this one proposed security measure would be any less today than they were expected to be seven years ago; in fact, they would probably be more." (Source: from USTelecom CPNI filing April 2006 at <http://www.ustelecom.org/getFile.php?k=029299ED4FF95CFB010AF0C0AD2459EA>)
 - OMB estimates that the information collection obligations to comply with the CPNI rules takes 139.2 hours per respondent. (source: <http://a257.g.akamaitech.net/7/257/2422/14mar20010800/e.docket.access.gpo.gov/2003/pdf/03-6145.pdf>)
 - This means for example, that even if a small business put someone full time just doing the paperwork (and not dealing with the vast other obligations that require technology, contractual, and training changes) it would take nearly a full month just to comply with the Paperwork reduction obligations surrounding the order. And the paperwork resources are just one minor aspect. It makes clear that it would be impossible for a small provider trying to comply with a proposed 30-day deadline.

- **Nothing in the record that suggests that Interconnected VoIP providers should or could comply with new obligations in an extraordinary timeframe, while it took others more than 2 years to comply**
 - As supported by OMB's estimates of 139.2 hours to comply with the paperwork obligations, it is physically impossible for Interconnected VoIP providers, or any other small businesses, to execute the paper work obligations, as well as the technical, operational, and human resource obligations within 30 days.
 - Imposing such an onerous implementation timeframe on VoIP providers is especially disconcerting, considering that VoIP providers would simultaneously have to implement whatever updated rules the Commission adopts on a separate timetable and, seek consistency between federal and state privacy statutes, and modify various contracts to reflect new requirements.
 - The Commission has previously allowed more than a year for telecommunications providers to come into compliance with its CPNI regulations.
 - More specifically, in February 1998, when the Commission released its initial rules implementing Section 222, it gave providers 11 months to implement the rules "[b]ecause the Commission anticipated that carriers would need time to conform their data systems and operations to comply with the software flags and electronic audit mechanisms required by the Order."
 - In September 1998, recognizing "that it will take time and effort to implement these requirements," the Commission extended the compliance timeframe by another 6 months.
 - Ultimately the Commission gave providers more than two years to implement the software flag and electronic audit mechanisms required by the original Section 222 rules.
- **Customer confusion should be minimized by Adopting only one harmonized transition timetable.**
 - The timeframe must adequately minimize harm to small businesses and account for the burden on the customers of these small businesses.
 - The Commission is also aware that, at the same time these CPNI requirements would be added, many VoIP providers will

be making their first FCC Form 499A filings and working towards compliance with the Commission's CALEA implementation deadlines.

- The Commission should not adopt two separate compliance timetables for Interconnected VoIP providers.
 - Instead, it should place compliance with any legacy rules on the same timetable as compliance with any new rules, and it should ensure that the transition timeframe is reasonable.
- The VON Coalition agrees with USTelecom's suggestion that one year would be a reasonable period of time for carriers to implement any new CPNI rules.

Pursuant to Section 1.1206(b) of the Commission's rules, one copy of this electronic notice is being filed in the above-referenced docket. Please feel free to contact me if you have any questions.

Regards,

/s/

Staci L. Pies
VP, Governmental and Regulatory Affairs,
PointOne
President, The VON Coalition

cc: Daniel Gonzalez - Chief of Staff, Chairman Martin
Michelle Carey - Senior Legal Advisor, Chairman Martin
Jessica Rosenworcel - Senior Legal Advisor, Commissioner Copps
Scott M. Deutchman - Competition and Universal Service Legal Advisor, Commissioner Copps
Ian Dillner - Legal Advisor, Commissioner Tate
Aaron Goldberger - Legal Advisor, Commissioner Tate
John W. Hunter - Chief of Staff & Senior Legal Advisor, Wireline Issues, Commissioner McDowell

Scott Bergmann - Legal Advisor for Wireline Issue,
Commissioner Adelstein